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IN THE
**SUPREME COURT OF THE
UNITED STATES**

No. 433

ALICE HOWE, AS EXECUTRIX OF THE ESTATE OF
MARY E. B. HOWE, DECEASED,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

MOTION.

ARNOLD R. BAAR,
HERBERT BEBB,
Attorneys for Petitioner.

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The Petitioner moves that the order of February 5, 1945, denying certiorari in this cause be vacated, and that action of this Court on the Petition for Certiorari be held in abeyance until decision of *Disston v. Commissioner*, No. 589, in support of which motion she offers the attached suggestions.

ARNOLD R. BAAR,
HERBERT BEBB,

Attorneys for Petitioner.

SUGGESTIONS IN SUPPORT OF MOTION.

1. This Court on February 5, 1945, entered orders granting certiorari in Disston (No. 589) and denying in Howe (No. 433).
2. The similarity of the two cases is demonstrated in our Petition, p. 19, where we list, in parallel columns, ten points of correspondence.
3. We recognize the possibilities that (1) the reason for the contrast in the orders may be that the decision appealed from was against the Government in Disston and in favor of the Government in Howe and (2) that this Court may have virtually decided to reverse Disston.
4. The possibility remains that the Disston briefs and argument may convince this Court that where the elements of futurity relied upon are inherent in the fact situation the instrument cannot be charged with creating a future interest, or may otherwise lead to a sustaining of Disston.
5. The cases are so similar that, if Disston is sustained, the Howe Petition for Certiorari ought to be weighed in relation to that decision.
6. Since the Howe tax has been paid (R. 3) no element of disadvantage to the Government is involved in our proposal.

Respectfully submitted,

ARNOLD R. BAAR,

HERBERT BEBB,

Attorneys for Petitioner.

